



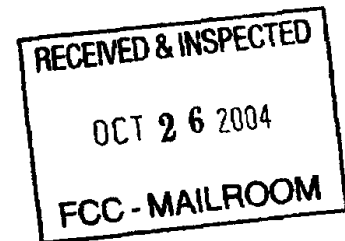
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DOCKET FILE COPY ORIGINAL

October 22, 2004

By Overnight Delivery

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743



Re: Late filed confidential exhibits, Review of the  
Section 251 Unbundling Obligations of Incumbent Local  
Exchange Carriers, CC Docket Nos. 01-338, 96-98 98-147

Dear Ms. Dortch:

On October 19, 2004, Supra Telecommunications and Information Systems, Inc. ("Supra") electronically filed Reply Comments in Re: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01-338, 96-98, 98-147. On October 20, 2004, Supra filed a revised and corrected version of its Reply Comments in the same docket. Please pull the Reply Comments filed on October 19, 2004 as they are superseded by the Reply Comments filed on October 20, 2004.

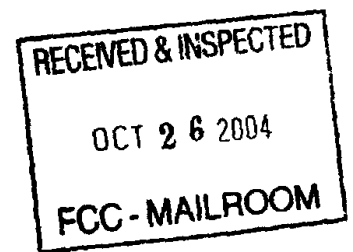
Enclosed are paper copies of two exhibits to Supra's Reply Comments that had to be filed on paper in order to redact confidential information contained in the exhibits. Please post these two exhibits with Supra's Reply Comments that were filed on October 20, 2004. Thank you for your assistance in this matter.

Sincerely,

Dave Stahly

Director, Regulatory Affairs  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of the Section 251 Unbundling	)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange	)	
Carriers	)	

**REPLY COMMENTS OF SUPRA TELECOMMUNICATIONS  
AND INFORMATION SYSTEMS, INC**

**Exhibit 2**

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**BEFORE THE FPSC -- DIRECT TESTIMONY OF**  
**DAVID A. NILSON**  
**ON BEHALF OF SUPRA TELECOMMUNICATIONS AND INFORMATION**  
**SYSTEMS, INC.**  
**DOCKET NO. 04-0301-TP**  
**FILED: SEPTEMBER 8, 2004**

I. INTRODUCTION AND SUMMARY OF TESTIMONY .....	2
II. BACKGROUND / SUMMARY .....	5
III. ISSUE 1 - UNDER THE CURRENT AGREEMENT, WHAT NONRECURRING RATE, IF ANY, APPLIES FOR A HOT-CUT FROM UNE-P TO UNE-L, WHERE THE LINES BEING CONVERTED ARE SERVED BY COPPER OR UDLIC, FOR (A) SL1 LOOPS AND (B) SL2 LOOPS? .....	7
IV. ISSUE 2 - UNDER THE PARTIES' EXISTING INTERCONNECTION AGREEMENT, WHAT NONRECURRING RATE, IF ANY, APPLIES FOR A HOT-CUT FROM UNE-P TO UNE-L, WHERE THE LINES BEING CONVERTED ARE NOT SERVED BY COPPER OR UDLIC, FOR (A) SL1 LOOPS AND (B) SL2 LOOPS? .....	13
V. ISSUE 3 - SHOULD A NEW NONRECURRING RATE BE CREATED THAT APPLIES FOR A HOT-CUT FROM UNE-P TO UNE-L, WHERE THE LINES BEING CONVERTED ARE SERVED BY COPPER OR UDLIC, FOR (A) SL1 LOOPS AND (B) SL2 LOOPS? IF SO, WHAT SHOULD SUCH NONRECURRING RATES BE? .....	13
VI. THE "COVAD" CROSSCONNECT IS FOR CONSTRUCTION OF INFRASTRUCTURE AND IS BEING IMPROPERLY APPLIED BY BELL SOUTH IN A MANNER WHICH ALLOWS BELL SOUTH DOUBLE RECOVERY OF ITS COST(S) .....	43
VII. PROBLEMS WITH THE WAY BS IS HANDLING/HAS HANDLED THE PROCESS TO DATE - LOSS OF INTERNET SPEED, ETC. ....	56
VIII. ECONOMIC ISSUES RELATING TO THE COST OF HOT CUTS ..... ERROR! BOOKMARK NOT DEFINED.	
IX. EXHIBITS .....	64

1     **I.     INTRODUCTION AND SUMMARY OF TESTIMONY**

2

3     **Q.     PLEASE STATE YOUR NAME AND ADDRESS**

4     A.     My name is David A. Nilson. My business address is 2620 SW 27<sup>th</sup> Avenue, Miami,  
5     Florida 33133.

6

7     **Q.     BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

8     A.     I am employed by Supra Telecommunications and Information Systems, Inc. ("Supra")  
9     as its Chief Technology Officer.

10

11    **Q.     PLEASE DESCRIBE YOUR BACKGROUND AND WORK EXPERIENCE.**

12    A.     I have been an electrical engineer for the past 27 years, with the last 23 years spent in  
13    management level positions in engineering, quality assurance, and regulatory departments.

14           In 1976, I spent two years working in the microwave industry, producing next generation  
15    switching equipment for end customers such as AT&T Long Lines, ITT, and the U.S.  
16    Department of Defense. This job involved extensive work with various government agencies. I  
17    was part of a three-man design team that produced the world's first microwave integrated circuit  
18    which was placed in production for AT&T within 30 days of its creation. I held jobs at two  
19    different companies in quality control management, monitoring and trouble-shooting  
20    manufacturing process deviations, and serving as liaison, and auditor regarding our regulatory  
21    dealings, with the government.

22           I spent 14 years in the aviation industry designing both airborne and land-based  
23    communications systems for various airlines and airframe manufacturers worldwide. This

1 included ASIC and Integrated Circuit design, custom designed hardware originally designed for  
2 the Pan American Airlines call centers, and various system controllers used on Air Force One  
3 and Two, other government aircraft including that for the Royal Family in England. I designed  
4 special purpose systems used by both the FAA and the FCC in monitoring and compliance  
5 testing. I was responsible for design validation testing and FAA system conformance testing.

6 Since 1992 I have been performing network and system design consulting for various  
7 industry and government agencies, including research and design engineering positions at the  
8 Argonne National Laboratories.

9 As a programmer for more than 35 years, I have extensive experience in systems  
10 analysis, design, and quality assurance procedures required by various US government agencies.  
11 I have designed Internet Service Provider networks and organizations, including Supra's. I have  
12 done communications related software consulting for Fortune 500 corporations such as Sherwin  
13 Williams, Inc.

14 I have attended extensive management and engineering training programs with Motorola,  
15 Lucent, Nortel, Siemens, Alcatel, Ascend, Cisco, Call Technologies, Southwestern Bell  
16 Telephone, Verizon (formally known as Bell Atlantic), and others.

17 I joined Supra in the summer of 1997. I am the architect of Supra's network and ISP, and  
18 designed its central office deployment and network operations. This includes planning, capacity  
19 and traffic analysis to define equipment capacity from market projections for voice services,  
20 Class 5 switch design and planning, transmission, data and Internet services, xDSL, voicemail  
21 and ILEC interconnection, ordering and billing. Additionally, I have negotiated interconnection  
22 agreements with Sprint, Verizon, Ameritech (SBC), SWBT, SWBT (SBC), and BellSouth, and I  
23 participate in bill analysis and dispute resolution and am intimately familiar with BellSouth retail

1 and CLEC OSS systems, CRIS and CABS billing systems and standards. I have helped to  
2 resolve tens of millions of dollars in over billed charges with BellSouth alone.

3  
4 **Q. HAVE YOU EVER TESTIFIED BEFORE?**

5 A. Yes, I testified before the Florida Public Service Commission ("FPSC") in numerous  
6 generic dockets and in various disputes between Supra and BellSouth regarding central office  
7 space availability, rates, requirements, and specifications for Collocation, Unbundled Network  
8 Elements ("UNEs"), and UNE Combinations. I have participated in settlement procedures  
9 before the FPSC staff on matters relating to OSS and OSS performance against BellSouth. I  
10 have testified before the Texas Public Utilities Commission ("TPUC") on matters of collocation  
11 regarding disputes with SWBT. I have made ex-parte presentations before the Federal  
12 Communications Commission ("FCC") regarding the Bell Atlantic/GTE merger, the UNE  
13 Triennial review in 2002, and the Department of Agriculture regarding Network Design and  
14 Expansion policies for CLECs. I have appeared before the FCC staff on several occasions in  
15 disputes against BellSouth regarding collocation. I have testified before regulatory arbitrators in  
16 Texas, and in Commercial arbitration against BellSouth. I have been deposed numerous times  
17 by BellSouth and SWBT. I was qualified as an expert witness in telecommunications by the  
18 TPUC in 2000. I have testified in Federal District Court and Federal Bankruptcy Court.

19  
20 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

21 A. The purpose of my testimony is to address Supra's position relative to Issue Nos. 1  
22 through 4.

1    **Q.    WHICH ISSUES DO YOU ADDRESS IN YOUR TESTIMONY?**

2    A.    I discuss what nonrecurring rate, if any, applies for a conversion from UNE-P to UNE-L  
3    when the UNE-P line is served by copper or UDLC loop (**Issue 1**) or IDLC loop (**Issue 2**), and  
4    whether a new nonrecurring rate should be created for a conversion from UNE-P to UNE-L  
5    when the UNE-P line is served by copper or UDLC (**Issue 3**), or IDLC (**Issue 4**), and what  
6    should be the rate for such a conversion (**Issues 3 and 4**).

7

8    **II.    Background / Summary**

9    **Q.    ARE ISSUES 1 AND 2 CONTRACTUAL OR REGULATORY ISSUES?**

10   A.    They are purely contractual issues because they require the FPSC to make a  
11   determination as to whether or not the Current Agreement contains actual rates for these  
12   processes.  
13   The contractual terms which need to be interpreted do not differ between copper, UDLC or  
14   IDLC served loops. The record evidence, and the current testimony of BellSouth proves that the  
15   FPSC never considered a rate for UNE-P to UNE-L conversions in the generic UNE Docket  
16   990649-TP. This is not surprising since, at 3-5<sup>1</sup> years after the 1996 Telecommunications Act  
17   was enacted, **not a single CLEC in Florida was able to order and enjoy UNE-P at TELRIC**  
18   **rates.** It was the May 2001 order of this Commission<sup>2</sup> which made it impossible for BellSouth  
19   to continue denying Supra what had already been promised by prior FPSC orders and two  
20   previous interconnection agreements. Supra was **first** able to issue UNE-P orders on June 17,

---

<sup>1</sup>    3+ years to the date the Docket was placed upon the calendar, 5+ years until the first order (PSC-01-1181-FOF-TP) was issued, 6+ years until the September 2002 order set the remaining rates in place.

<sup>2</sup>    See Supra Exhibit # DAN-1-- PSC-01-1181-FOF-TP.

1 2001, the day the ordering procedures were made available to Supra and BellSouth enabled  
2 UNE-P OSS (LENS) access<sup>3</sup>.

3 Neither BellSouth nor the CLEC industry even had a basis to establish a rate for UNE-P  
4 to UNE-L conversions in the 1999 – 2001 timeframe because no CLEC had received UNE-P.  
5 BellSouth's cost expert, Ms. Caldwell admits that she never prepared, submitted or discussed the  
6 conversion of UNE-P to UNE-L in the last generic UNE Docket.

7 Notwithstanding such, significant portions of the cost study which BellSouth now purports  
8 represents the FPSC's "prior determination" of this issue may apply to a hot cut, but only when a  
9 new UNE-L line needs a truck roll in order to be installed and, as a result, Supra's First  
10 Amended Petition requests the establishment of two rates, which are actually tailored to the  
11 specific job functions involved in performing conversions of existing, working lines (as opposed  
12 to installing new service) so as to allow Supra to choose which services to purchase from  
13 BellSouth, and which to self-provision. This is not unlike the decisions which led to the creation  
14 of SL1 and SL2 rates, and geographically de-averaged loop rates.

15

16 **Q. ARE ISSUES 3 AND 4 CONTRACTUAL OR REGULATORY ISSUES?**

17 **A.** They are both. At the outset, it is a contractual issue. The Commission must first decide  
18 whether, under the Current Agreement, BellSouth is allowed to charge Supra anything for  
19 performing the services requested in this case. Should the Commission find in favor of Supra, it  
20 need look no further. However, if the Commission finds in favor of BellSouth on the threshold

---

<sup>3</sup> Albeit buggy and prone to cause loss of dialtone at conversion for approximately 65% of all orders.



1 contractual issue, then the Commission must set an appropriate rate, and thus it becomes a  
2 regulatory issue.

3

4 **Q. WHAT OTHER ISSUES NEED TO BE CONSIDERED HERE?**

5 A. The activities for which BellSouth is seeking cost recovery may well have **already been**  
6 **paid** for when the line was provisioned to Supra as UNE-P. After all, if the customer being  
7 served by UNE-P had no service or warm dialtone at the time Supra ordered UNE-P on their  
8 behalf, BellSouth **already** billed and collected the full A.1.1 (\$49.57) NRC<sup>4</sup> as part of a larger  
9 UNE-P NRC<sup>5</sup> of \$90, or another CLEC (or BellSouth) incurred that larger cost. In either case,  
10 Supra should not bear this cost, much less be asked to bear it **twice**, when the majority of UNE-  
11 P to UNE-L conversion scenarios avoid most of the work effort which makes up the \$49.57 NRC  
12 rate, i.e. the switch-as-is NRC of 10.2 cents, but the provision of new service NRC is ninety  
13 dollars (\$90). BellSouth is not entitled to double recovery, or for recovery of costs that could  
14 have, and should have been avoided but for provisioning decisions that Bellsouth alone is  
15 responsible for.

16

17 **III. Issue 1 – Under the Current Agreement, what nonrecurring rate, if any, applies for**  
18 **a hot-cut from UNE-P to UNE-L, where the lines being converted are served by**  
19 **copper or UDLC, for (a) SL1 loops and (b) SL2 loops?**

20

21 **Q. DOES SUPRA CLAIM THAT THE CURRENT AGREEMENT CONTAINS OR**  
22 **REFERENCES A RATE FOR UNE-P TO UNE-L CONVERSIONS?**

---

<sup>4</sup> Supra Exhibit # DAN-1 PSC-01-1181-FOF-TP Appendix A.  
<sup>5</sup> See Interconnection agreement pg 161 of 593.

1 A. No. Supra makes no such claim.

2 Q. DOES BELL SOUTH CLAIM THAT THE CURRENT AGREEMENT CONTAINS  
3 OR REFERENCES A RATE FOR UNE-P TO UNE-L CONVERSIONS?

4 A. No. While BellSouth tries to argue that the A.1.1 and A.1.2 non-recurring cost study  
5 ("FL-2w.xls") is appropriate to be used as the non-recurring rate, BellSouth admits that the  
6 Current Agreement does **not** contain or even reference a rate for UNE-P to UNE-L conversions.<sup>6</sup>  
7 In its pleading before the United States Bankruptcy Court, Southern District of Florida,  
8 BellSouth stated:

9 BellSouth agrees that the terms of the Agreement do not explicitly reference a  
10 conversion process from the Port/Loop combination Service (i.e. UNE-P) Supra  
11 currently uses to the separate 2-Wire Analog Voice Grade Loop Service (i.e.  
12 UNE-L) Supra now Seeks to use. BellSouth **believes** that the process and rates  
13 detailed in the Present Agreement for conversion of BellSouth's retail service to  
14 UNE-L should be applied to UNE-P to UNE-L conversions because UNE-P is,  
15 for the several functions involved in conversion to UNE-L, the functional  
16 equivalent of BellSouth's retail service. BellSouth has been, and continues to be,  
17 ready to convert service consistent with the contractual process if it has adequate  
18 assurance that the applicable rates will be paid. (Emphasis added.)  
19

20 This statement by BellSouth is erroneous, in that the Current Agreement **does** explicitly  
21 reference a **process** for hot cuts<sup>7</sup> but it simply does not define the **rate** to be charged.  
22 Interestingly, it is in this pleading<sup>8</sup> that BellSouth first makes the claim for \$59.31 NRC for  
23 A.1.1, increasing its previous demand for \$51.09<sup>9</sup> by including the \$8.22 "Covad Crossconnect",

---

<sup>6</sup> See Supra Exhibit # DAN-19-- Emergency Motion of BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions at p. 5, para. 12.

<sup>7</sup> See Supra Exhibit # DAN-4, PSC-02-0413-FOF-TP, Issue 'R', pages 108-114, TOC of order states page 111.

<sup>8</sup> See Supra Exhibit # DAN-19-- Emergency Motion of BellSouth Telecommunications, Inc. for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions at p. 5, para. 12.

<sup>9</sup> \$49.57 A.1.1 NRC plus \$1.52 LENS OSS ordering charge. See Supra Exhibit # DAN 13.

1 despite the fact that "...the terms of the Agreement do not explicitly reference a conversion  
2 process from the Port/Loop combination Service (i.e. UNE-P)...".

3

4 **Q. DOES BELL SOUTH ASSERT THAT THE RATES FOR UNE, UNE-P, OR**  
5 **INTERCONNECTION ARE NOT EXCLUSIVELY TIED TO THE FPSC'S ORDERS**  
6 **IN DOCKETS 990649-TP AND 000649-TP?**

7 A. Apparently, as BellSouth is relying on FPSC orders in Docket 001797-TP to justify the  
8 billing of a PE1P2 crossconnect (FPSC UNE Element H.1.9) when it performs any UNE-P to  
9 UNE-L conversion, in addition to the purported cost of the hot cut claimed as a result of the rates  
10 set forth in Dockets 990649-TP and 000649-TP. However this reliance is unfounded, as the  
11 FPSC was quite clear in this regard<sup>10</sup>. The unbundled rates in the Current Agreement are tied to  
12 the FPSC orders in Docket 990649-TP<sup>11, 12, 13</sup> and, in regard to line splitting only, Docket  
13 000649-TP.

14 Based on the testimony and post-hearing briefs of the parties it appears that  
15 BellSouth and Supra actually have similar views on the rates in this issue. The  
16 only exception is the rates which Supra wishes to designate as interim rates  
17 subject to true-up. This issue has been substantially narrowed to include the  
18 network elements for which we have established rates, and the network elements  
19 for which rates have not been established. Since the parties appear to agree on a  
20 majority of the "items" in this issue we believe that the rates we established in  
21 Docket Nos. 990649-TP and 000649-TP are the appropriate rates for (B)

---

<sup>10</sup> See Supra Exhibit # DAN-4 -- PSC-02-0413-FOF-TP at pg 71-72, identify the source of rates for this agreement.

<sup>11</sup> See Supra Exhibit # DAN-1 -- PSC-01-1181-FOF-TP.

<sup>12</sup> See Supra Exhibit # DAN-2 -- PSC-01-2051-FOF-TP.

<sup>13</sup> See Supra Exhibit # DAN-3 -- PSC-02-1311-FOF-TP

1 Network Elements, (C) Interconnection, (E) LNP/INP, (F) Billing Records<sup>14</sup>,  
2 and (G) Other<sup>15</sup>.

3  
4 (Supra Exhibit # DAN-4 -- PSC-02-0413-FOF-TP at pp 71-72, emphasis added)  
5

6 Q. HAVE THERE BEEN ANY COURT DETERMINATIONS RELATIVE TO  
7 WHETHER THE AGREEMENT CONTAINS A RATE FOR UNE-P TO UNE-L  
8 CONVERSIONS?

9 A. Yes. On July 15, 2003, the United States Bankruptcy Court, Southern District of Florida,  
10 held<sup>16</sup>:

11 The Court finds that Supra should pay the UNE-L Conversion changes on a  
12 weekly basis at the rate proposed by BellSouth in its Motion (the "BellSouth  
13 Rate") unless BellSouth voluntarily agrees to a lower rate. This rate will be  
14 subject to later adjustment if an appropriate regulatory body fixes a lower rate (the  
15 "Regulated Rate"). **Although the BellSouth/Supra contract does not**  
16 **specifically set a rate for UNE-P to UNE-L conversions, BellSouth believes the**  
17 **\$59.31 Rate proposed in its motion applies...**

18  
19 ( Supra Exhibit # DAN-21, emphasis added).  
20

21 Q. DOES BELL SOUTH CLAIM THAT IT HAS PREPARED, OR FILED FOR FPSC  
22 REVIEW, A COST STUDY WHICH ADDRESSES THE RETAIL TO UNE-L OR  
23 UNE-P TO UNE-L CONVERSION COSTS?

---

<sup>14</sup> 02-0413 original footnote - Although there is no discussion as to specific billing records, we presume the items intended to be addressed are Access Daily Usage File (ADUF), Optional Daily Usage File (ODUF), and Enhanced Optional Daily Usage File, for which we have established rates in Docket No. 990649-TP.

<sup>15</sup> 02-0413 original footnote - Although there is no discussion as to a specific "other" network element(s) by either party, we presume the item intended to be addressed is line-sharing, for which we established rates in Docket No. 000649-TP.

<sup>16</sup> See Supra Exhibit # DAN-21-- Order Granting Emergency Motion of BellSouth Telecommunications, Inc., for Interim Relief Regarding Obligation to Perform UNE-P to UNE-L Conversions (the "Order"), at p. 2.

1           **WHERE THE LINES BEING CONVERTED ARE SERVED BY COPPER OR**  
2           **UDLC, FOR (A) SL1 LOOPS AND (B) SL2 LOOPS?**

3    A.    No.

4

1 IV. Issue 2 – Under the parties’ existing interconnection agreement, what nonrecurring  
2 rate, if any, applies for a hot-cut from UNE-P to UNE-L, where the lines being  
3 converted are not served by copper or UDLC, for (a) SL1 loops and (b) SL2 loops?  
4

5 Q. DOES THE CURRENT AGREEMENT SEPARATELY ADDRESS THE  
6 CONVERSION OF UNE-P LINES SERVED BY IDLC, OR TREAT IDLC  
7 SERVED LOOPS ANY DIFFERENT THAN COPPER OR UDLC?

8 A. No. Supra’s position relative to Issue 1, that, *inter alia*, the Current Agreement lacks an  
9 explicit rate, applies equally to Issue 2 as well. I also point the Commission to Supra’s Motion  
10 for Partial Summary Final Order on Issues 1 and 2.  
11

12 V. Issue 3 - Should a new nonrecurring rate be created that applies for a hot-cut from  
13 UNE-P to UNE-L, where the lines being converted are served by copper or UDLC,  
14 for (a) SL1 loops and (b) SL2 loops? If so, what should such nonrecurring rates be?  
15

16 Q. WHAT DOES THE CURRENT AGREEMENT STATE REGARDING THE  
17 RELEVANT OBLIGATION OF THE PARTIES?

18 A. GT&C § 3.1 establishes an obligation on BellSouth to cooperate in terminating services  
19 or elements and transitioning customers to Supra services.  
20

21 Furthermore, GT&C § 22.1 says that if a party has an obligation to do something, it is  
22 responsible for its own costs in doing it, “except as otherwise specifically stated.” In this case,  
23 the language of the contract specifies an explicit process to be used for the hot cut from retail to  
24 UNE-P and UNE-L, but no rate for the hot-cut.

1

2 **Q. WHAT DOES THE SPECIFIC CONTRACT LANGUAGE SAY ABOUT THE**  
3 **"HOT CUT" PROCESS, AND OBLIGATIONS?**

4 A. The "hot cut" process that BellSouth says applies here is described in the Current  
5 Agreement, Attachment #2, Network Elements in Section 3.8. Section 3.8.1, which makes clear  
6 that the referenced process applies "when Supra Telecom orders and BellSouth provisions the  
7 conversion of *active BellSouth retail end users* to a service configuration by which Supra  
8 Telecom will serve such end users by unbundled Loops and number portability (hereinafter  
9 referred to as 'Hot Cuts')." It is impossible to reconcile the requirement of a "specific  
10 statement" that a charge applies, noted above, with the claim that Section 3.8 applies where  
11 "active BellSouth retail end users" are involved.

12 So, under GT&C § 3.1, BellSouth has an obligation; under GT&C § 22.1 that obligation  
13 is to be performed at BellSouth's expense unless "specifically stated" otherwise elsewhere in the  
14 Current Agreement; nothing in either GT&C § 3.1 or the UNE attachment "specifically states" a  
15 price for the cooperation and coordination required by GT&C § 3.1, and BellSouth has  
16 affirmatively stated in federal court that the Current Agreement does not specifically address it.  
17 It follows that the obligation in GT&C Section 3.1 is to be fulfilled at BellSouth's expense.

18

19 **Q. WHY DOES THIS MAKE SENSE?**

20 A. Whether UNE-P or UNE-L, the same loop is used. BellSouth avoids providing, and  
21 Supra avoids paying for, Unbundled Local Switching, and Unbundled Common Transport.  
22 BellSouth still provides, and Supra still pays for, the same loop element. At the time the Current

1 Agreement was negotiated and arbitrated in 1999-2001, there was no indication that the FCC  
2 would seek to eliminate UNE-P by eliminating the Unbundled Local Switching UNE.

3 As such, to get a CLEC to abandon the UNE-P method, BellSouth's only motivation  
4 would be to make the transition, troublesome as it might be, more attractive. It is fundamentally  
5 incorrect to read the Current Agreement in light of the TRO, as the tenets of the TRO were  
6 unknown at the time. Instead, the Current Agreement should be read in the light of the *UNE*  
7 *Remand Order* (00-238).

8 Nowhere in the *UNE Remand Order*, or the FPSC orders in 990649-TP which stem from  
9 it, is a crossconnect element part of

- 10 1) UNE-P
- 11 2) EELS
- 12 3) Point – to – point T1's constructed from UNE's, etc.

13  
14 In each case, the line side, and network side crossconnects between elements were embedded  
15 within the major elements being joined. Yet within each combination of UNE's, the  
16 demarcation, both physical and cost is clearly defined and accounted.

17 In this regard, BellSouth is incorrect when it claims that what Supra is seeking is the  
18 cessation of the use of one integrated "facility" (the UNE-P arrangement) and the "simultaneous  
19 replacement" of that "facility" "with a new facility."<sup>20</sup> Any given Supra UNE-P customer is  
20 served by a specific unbundled BellSouth loop that is connected to a BellSouth switch (the  
21 functionality of which is also being purchased as a UNE). Supra does not want to "replace" the  
22 UNE loops serving its customers with new "facilities." To the contrary, it wants to disconnect

---

<sup>20</sup> See Supra Exhibit # DAN-20 7/14/2003 BellSouth Letter to FCC at pg. 10.



1 the unbundled local switching element, and keep on using exactly the same "facility" as it is  
2 using today, only without also using BellSouth's UNE switching.

3 After all, if the customer being served by UNE-P had no service or warm dialtone at the  
4 time Supra ordered UNE-P on their behalf, BellSouth **already** billed and collected the full A.1.1  
5 (\$49.57) NRC<sup>21</sup> as part of a larger UNE-P NRC<sup>22</sup> of \$90, or another CLEC (or BellSouth)  
6 incurred that larger cost. In either case, Supra should not bear this cost, much less be asked to  
7 bear it **twice**, when the majority of UNE-P to UNE-L conversion scenarios avoid most of the  
8 work effort which makes up the \$49.57 NRC rate.

9 Neither the Current Agreement, nor the FPSC's generic UNE Docket addressed this  
10 conversion, although the conversion from retail/resale to UNE-P was explicitly costed. This is  
11 understandable, since at the time, no CLEC in Florida was able to order UNE-P, and the  
12 regulatory landscape did not indicate that there would be a mechanism that would allow  
13 BellSouth to escape its statutory obligation to unbundle its network by eliminating Unbundled  
14 Local Switching (and thus eliminating UNE-P). As we are all aware, this is exactly what  
15 BellSouth seeks, post TRO. Yet BellSouth now wishes to view yesterday's proceeding through  
16 today's regulatory environment. The ability to actually order and receive UNE-P service from  
17 BellSouth needed to exist before a rational method for conversion could be created. At the time  
18 of the FPSC May 2001 order<sup>23</sup> UNE-P was not yet available in Florida<sup>24</sup>.

19

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<sup>21</sup> Supra Exhibit # DAN-1 PSC-01-1181-FOF-TP Appendix A.

<sup>22</sup> See Interconnection agreement pg 161 of 593.

<sup>23</sup> PSC-01-1181-FOF-TP, Dated May 25, 2001

<sup>24</sup> Despite it being proscribed by Telecom Act of 1996, FPSC orders, the Supreme Court rulings in AT&T v. Iowa Utilities, and every interconnection agreement Supra had with BellSouth, BellSouth delayed its implementation of UNE-P for over 6 years.

1

2 **Q. HOW DOES BELL SOUTH RESPOND TO THIS?**

3 A. In this docket, that still remains to be seen. But based on past experience, BellSouth  
4 fundamentally misreads Supra's contract claim, which is supported by G T & C § 7.1 (requiring  
5 each party to do what is necessary to comply with governing law at its own expense) but which  
6 does not depend on it<sup>25</sup>. In a response to the FCC on this matter<sup>26</sup>, BellSouth puts forth its  
7 strained interpretation of GT & C § 22.1. According to BellSouth, the "costs and expenses" it  
8 will (supposedly) incur in meeting its obligations under GT & C § 3.1 to assist Supra in  
9 terminating the use of UNE switching are not really "costs and expenses" at all; they are really  
10 "rates" that are governed by § 22.2. But Supra is not objecting to the rates for UNE loops or  
11 UNE switching. Supra is simply noting that BellSouth agreed to do something under the  
12 contract for which no rate is "specifically" provided.<sup>27</sup> BellSouth has already admitted to such.

13

14 **Q. GIVEN THAT THE CURRENT AGREEMENT'S RATES ARE BASED UPON**  
15 **FPSC ORDERS IN 990649-TP, DOES THAT PROCEEDING TAKE**  
16 **PRECEDENCE OVER THE TERMS OF THE CURRENT AGREEMENT?**

17 A. Absolutely not. No more than it would be valid if BellSouth wanted to avoid a  
18 contractually mandated "bill and keep" provision for reciprocal compensation on the grounds  
19 that the FPSC had established an appropriate, cost-based rate for intercarrier compensation.

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<sup>25</sup> See Supra Exhibit # DAN-20 7/14/2003 BellSouth Letter to FCC at pg. 18.

<sup>26</sup> See Supra Exhibit # DAN-20, 7/14/2003 response to the FCC.

<sup>27</sup> Of course, BellSouth's claim that granting Supra's interpretation would mean that no rates under the contract would ever apply, *see* Supra Exhibit # DAN-20 7/14/2003 BellSouth Letter to FCC at pg. 18, is nonsense. Precisely as § 22.1 says, the rates in the contract apply whenever it is "specifically stated" that they do. For precisely this reason, the "hot cut" rate does *not* apply to paring down a an "active *Supra* retail end user's" UNE-P arrangement to a UNE-L arrangement.

1 Here, in the circumstances governed by GT & C § 3.1, BellSouth has agreed to perform certain  
2 activities for free. As the language at issue is neither unclear nor ambiguous, this Commission  
3 need not look to the intent of the parties in determining what the language means. Even if the  
4 Commission was so inclined, as BellSouth was the drafter of such language, any ambiguities  
5 should be read in favor of Supra.

6

7

8 **Q. SHOULD A NEW NONRECURRING RATE BE CREATED THAT APPLIES**  
9 **FOR A HOT-CUT FROM UNE-P TO UNE-L, WHERE THE LINES BEING**  
10 **CONVERTED ARE SERVED BY COPPER, UDLIC OR IDLC?**

11 A. No. The terms of the current Supra/BellSouth Florida interconnection agreement (the  
12 "Current Agreement") specifically contemplate the necessity of conversions from retail to resale  
13 to UNE-P<sup>28</sup> and the FPSC clearly addressed Supra's issue on **all three types of conversions** in  
14 the course of Docket 001305-TP, wherein it ordered:

15 Consequently, based on the record, we find that BellSouth's coordinated  
16 cut-over process should be implemented **when service is transferred from a**  
17 **BellSouth switch to a Supra switch.** Alternatively, Supra may choose to adopt  
18 the provisions the language agreed to by BellSouth and AT&T regarding  
19 coordinated conversions, and approved by us in Order No. PSC-01-2357-FOF-TP  
20 in Docket No. 000731-TP, should be incorporated.

21

22 **With respect to UNE-P conversions,** BellSouth witness Kephart admits  
23 that no physical disconnection of service occurs during a UNE-P conversion.  
24 However, he explains that in a UNE-P conversion, BellSouth is "effectively  
25 turning over a portion of (its) plant on the UNE basis to another company." He  
26 contends that there are "billing issues" that are associated with the conversion and  
27 that BellSouth has to address those issues within its system. (TR 410) Witness

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<sup>28</sup> Supra Exhibit # DAN-4 – Order PSC02-0413-FOF-TP, Issue R. Coordinated Cut-Over Process  
pages 113-114.

1 Kephart states that the "D" and "N" order process is the most effective method  
2 BellSouth has come up with to accomplish UNE-P conversions, and that this  
3 process has an error rate of "somewhere around 1% or less."  
4

5 While there is no evidence in the record disputing BellSouth's claim that  
6 the process results in an error rate of 1% or less, we note that when customers go  
7 without service as a result of this process, the customer will likely blame Supra,  
8 not BellSouth, for the problem. Furthermore, we agree with Supra witness Nilson  
9 that the conversion process is a "billing change" and consequently, a customer  
10 should not experience a disconnection of service during a conversion. As such,  
11 BellSouth shall be required to implement a single "C" (Change) order instead of  
12 two separate orders, a "D" (Disconnect) order and an "N" (New) order, **when**  
13 **provisioning UNE-P conversions.** BellSouth's coordinated cut-over process  
14 should be implemented **when service is transferred from a BellSouth switch to**  
15 **a Supra switch.** Alternatively, the language agreed to by BellSouth and  
16 AT&T, and approved by us in Order No. PSC-01-2357-FOF-TP, in  
17 **resolution of this issue, should be incorporated.**  
18

19 (Emphasis Added - Supra Exhibit # DAN-4 -- Order PSC02-0413-FOF-TP, Issue R. Coordinated  
20 Cut-Over Process pages 113-114.).  
21

22 The Current Agreement clearly anticipated the work activities would and should take  
23 place, yet no effort was ever made, under the former regulatory rules and framework, to establish  
24 a rate for such activities. Under such conditions the Current Agreement states that the parties are  
25 to bear their own costs of complying with their respective contractual obligations. The fact that  
26 the TRO has potentially given BellSouth a different view of a future without UNE-P should not  
27 now cause new rates to be established where none were previously contemplated.

28 Furthermore the terms of the Current Agreement, General Terms and Conditions state  
29 that the parties shall bear their own costs of complying with their obligations under the Current  
30 Agreement, absent specific rates. It is undisputed that there are **no** rates for UNE-P to UNE-L  
31 conversions in the Current Agreement or in the, either stemming from the FPSC's orders in  
32 Docket 990649-TP, or the Current Agreement between the parties.  
33

1 Q. IN THE ALTERNATIVE, SHOULD THIS COMMISSION RULE AGAINST  
2 SUPRA ON THE CONTRACTUAL ISSUE, SHOULD A NEW NONRECURRING  
3 RATE BE CREATED THAT APPLIES FOR A HOT-CUT FROM UNE-P TO  
4 UNE-L, WHERE THE LINES BEING CONVERTED ARE SERVED BY  
5 COPPER, UDLC OR IDLC?

6 A. Yes. A plain reading of the Current Agreement states that the parties shall bear their own  
7 costs of complying with their obligations under the agreement, absent specific rates. Should the  
8 Commission rule against Supra regarding its contractual interpretation, than the Commission  
9 should set a new, reasonable rate for a hot cut wherein the line involved is served via copper or  
10 UDLC (i.e. non-IDLC lines), as well as a new, reasonable rate for a hot cut wherein the line  
11 involved is served via IDLC.

12  
13 Q. IN A PURE ANALYSIS – WHAT IS A HOT-CUT?

14 A. It is quite simply, exactly what BellSouth witnesses testified that it is during testimony in  
15 Docket 03-0381TP. That is:

16 A hot cut, simply defined, is moving a jumper from one location to another. The  
17 hot cut itself involves basic network functions and skills that are used repeatedly  
18 in BellSouth's Network every day. The extensive number of customers being  
19 served in Florida by a combination of a BellSouth loop and a CLEC switch  
20 demonstrates that BellSouth has a hot cut process that works.

21  
22 (Supra Exhibit # DAN-23 Direct Testimony of Kenneth Ainsworth in Docket 030851-TP  
23 at page 3)  
24

1 The hot cut case is simple because it involves a process that has been around for  
2 100 years – moving a jumper from one location to another. BellSouth can do it,  
3 AT&T can do it, and MCI can do it.<sup>29</sup>  
4

5 A hot cut is no less, but most importantly by BellSouth's sworn testimony, it is no more, either.  
6

7 **Q. IS THIS AN OVERSIMPLIFICATION OF THE ACTUAL BELL SOUTH**  
8 **PROCESS?**

9 A. Perhaps, but if so the confusion is caused by BellSouth in pursuing the mutually  
10 exclusive goals of TRO simplicity, and achieving a maximum rate in this Docket. On the one  
11 hand, BellSouth asserts that each and every one of the steps costed in the A.1.1 and A.1.2 NRC  
12 cost study<sup>30</sup> are actually performed and properly costed before this commission **even though the**  
13 **exact process was developed and revised much later.** All told, this cost study accumulates  
14 the **thirty four (34)** individual work activities, performed by **nine (9)** different paygrades, in  
15 **seven (7)** separate departments. BellSouth now claims that such is a true and accurate  
16 assessment of its work activity in this docket where BellSouth is seeking the maximum possible  
17 rate. Yet, in the TRO proceeding, where the burden of proof is unequivocally on BellSouth, the  
18 hot-cut is defined by just **five (5)** work activity steps performed by three (3) departments.  
19

20 **Q. IGNORING THE CONTESTED TERMS OF THE CURRENT AGREEMENT,**  
21 **WOULD A HOT-CUT CONVERSION FROM UNE-P TO UNE-L DEVELOPED**  
22 **IN THIS PROCEEDING DIFFER FROM A TRO HOT-CUT?**

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<sup>29</sup> See Direct Testimony of BellSouth's John A. Ruscilli in Docket No. 030851-TP, pg. 13, filed December 4, 2003.

<sup>30</sup> Indeed, BellSouth asserts that the August 16, 2000 cost study (Supra Exhibit # DAN-6, file FL-2w.xls) is the appropriate cost study (even though it does not reflect FPSC ordered adjustments which lowered BellSouth's \$71+ estimate to the \$49.57 rate we have today for a new A.1.1 loop.

1 A. It should not, either in method or cost. Both would have to be developed at TELRIC  
2 cost, plus a reasonable profit, based on the various interpretations of CFR §51.505 and its  
3 subsections. The process would have to avoid unnecessary disconnections whose sole purpose  
4 would be to raise the costs to Supra. In *AT&T Corporation v. Iowa Utilities Board*, 525 U.S.  
5 366, 394 (1999), the Supreme Court ruled that the ILEC could not mandate provisioning which  
6 effected disconnection of elements unnecessarily raising the cost to new entrants:

7 Rule 315(b) forbids an incumbent to separate already-combined network elements  
8 before leasing them to a competitor. As they did in the Court of Appeals, the  
9 incumbent objects to the effect of this rule when it is combined with others before  
10 us today. TELRIC allows an entrant to lease network elements based on forward-  
11 looking costs, Rule 319 subjects virtually all network elements to the unbundling  
12 requirement, and the all-elements rule allows requesting carriers to rely on the  
13 incumbents network in providing service. When Rule 315(b) is added to these, a  
14 competitor can lease a complete, preassembled network at (allegedly very low)  
15 cost-based rates... The reality is that §251(c)(3) is ambiguous on whether leased  
16 network elements may or must be separated, and the rule the Commission has  
17 prescribed is entirely rational, finding its basis in §251(c)(3) nondiscrimination  
18 requirement. As the Commission explains, it is aimed at preventing incumbent  
19 LECs from "disconnect[ing] connected elements, over the objection of the  
20 requesting carrier, not for any productive reason, but just to impose wasteful  
21 reconnection costs on new entrants." Reply Brief for Federal Petitioners 23. It is  
22 true that Rule 315(b) could allow entrants access to an entire preassembled  
23 network. In the absence of Rule 315(b), however, incumbents could impose  
24 wasteful costs on even those carriers who requested less than the whole network.  
25 It is well within the bounds of the reasonable for the Commission to opt in favor  
26 of ensuring against an anticompetitive practice.

27  
28 In furtherance of such, the FPSC previously refuted BellSouth's position finding:

29 Based on the evidence in the record, we conclude that BellSouth's collocation  
30 proposal is unnecessary for the migration of an existing BellSouth customer. We  
31 **conclude further that BellSouth's proposal to break apart loop and port**  
32 **combinations that are currently connected, requiring AT&T or MCI to**  
33 **establish a collocation facility where the unbundled loop and the unbundled port**  
34 **would be recombined, is in conflict with the terms of the parties' agreements**  
35 **and the Act as interpreted by the Eighth Circuit. Iowa Utilities Bd. I, 120**

1 F.3d at 814. Moreover, we find that BellSouth's proposal does not address  
2 the migration of an existing BellSouth end user. Hence, we reject it.<sup>31</sup>

3  
4 (Emphasis added).

5  
6 The issue was never adjudicated in the last generic UNE cost setting docket, and  
7 BellSouth allegedly generated, but failed to present its cost studies during the Florida TRO  
8 hearings.<sup>32</sup> However it is quite obvious that BellSouth seeks, via the TRO process, to escape its  
9 obligation to offer UNE-P at TELRIC rates. In order for this to be considered, BellSouth's TRO  
10 hot-cut procedure, track record, and cost must be reviewed.

11 In the TRO proceeding<sup>33</sup>, a hot-cut was a simple, straightforward, and quick process,  
12 performed by a single group. In this Docket<sup>34</sup>, it is complex, detailed, confusing, time-  
13 consuming process, involving a number of departments, each with one (or often more) people  
14 involved in a carefully orchestrated, time consuming and expensive process which does exactly  
15 the same thing. Supra requests that the FPSC hold BellSouth responsible for a single hot-cut  
16 process/cost in both the TRO proceeding,<sup>35</sup> and this proceeding.

17  
18  
19 **Q. PLEASE EXPLAIN BELL SOUTH'S INDIVIDUAL HOT CUT PROCESS.**  
20

---

<sup>31</sup> PSC-98-0810-FOF-TP at pg 66.

<sup>32</sup> BellSouth was at that time defending itself on this matter both before the FCC and in Federal Court in Miami where this cost study that Mr. Ainsworth testified was "lower" than the A.1.1 and A.1.2 would have been detrimental to BellSouth's ability to charge Supra the \$59.31 it currently seeks.

<sup>33</sup> Of course, in the TRO proceeding, BellSouth was seeking to relieve itself of the obligation to provide unbundled switching at TELRIC prices.

<sup>34</sup> Of course, in this Docket, BellSouth is seeking to keep the rate for performing hot cuts as high as possible.

<sup>35</sup> It is inevitable that this Commission will ultimately sit in judgment upon a TRO compliant hot-cut as the FCC is currently barred by statute from setting such a rate. That is the obligation of the state commission(s).



1 A. BellSouth has a seamless individual hot cut process that ensures minimal end-user  
2 service outage. A flow chart of the individual hot cut process is attached to my testimony  
3 as Exhibit KLA-1<sup>36</sup>. BellSouth's process provides for the following:

- 4 1. Pre wiring and pre-testing of all wiring prior to the due date.
- 5 2. Verification of dialtone from the CLEC switch.
- 6 3. Verification of correct telephone number from the BellSouth and  
7 CLEC switch using a capability referred to as Automatic Number  
8 Announcement ("ANAC")
- 9 4. Monitoring of the line prior to actual wire transfer to ensure end-user  
10 service is not interrupted
- 11 5. Notification to the CLEC that the transfer has completed.

12  
13 (Supra Exhibit # DAN-23 Direct Testimony of Kenneth Ainsworth in Docket 030851-TP  
14 at p. 10)

15  
16 All told, 5 worksteps, (three of which are buried in the 15 minutes allocated for  
17 INPUTS\_CONNECT& TEST – Central Office Forces) from 3 departments. This tracks  
18 favorably with the three (3) departments Mr. Ainsworth identifies in exhibit KLA-1 (*See Supra*  
19 **Exhibit # DAN-31**): CWINS, Central Office (CO) Forces, and Outside Technician (I&M or  
20 SSI&M) department. FL-2W.xls makes no mention whatsoever CWINS being involved in the  
21 A.1.1 or A.1.2 NRC rate, and assumes<sup>37</sup> that **both** Central Office Forces **and** Outside Technician  
22 (I&M or SSI&M) are involved in a UNE-L order<sup>38</sup>.

23 However Mr. Ainsworth's hot cut **clearly** identifies that **one or the other, not both**  
24 departments are to be involved. *See Supra Exhibit # DAN-31*, Flowchart at the rightmost  
25 diamond<sup>39</sup>. The effect of this substantial difference should be enough to **halve** the FPSC ordered  
26 A.1.1 and A.1.2 NRC rates by itself.

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<sup>36</sup> See Supra Exhibit # DAN-31 for Exhibit KLA-1 to Mr. Ainsworth's testimony.

<sup>37</sup> At least in the manner which BellSouth interprets the cost study.

<sup>38</sup> These two work activities are the majority of the \$49.57 rate!

<sup>39</sup> Labeled "On Due Date, Inside or Outside Cut?"